
Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

West Harbor Towing Service

Port Clinton, Ohio

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File No. EB-03-DT-883

NAL/ Acct. No. 200432360002

FRN: 0004 8484 01

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: March 15, 2004

By the District Director, Detroit Office, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that West Harbor Towing Service ("West Harbor Towing") has apparently violated the Great Lakes Agreement ("GLA")¹ and Sections 80.953(a) and 80.953(b) of the Commission's Rules² (the "Rules") as a result of their vessel the "West Harbor" navigating the Great Lakes without having the annual GLA inspection and certification of their marine VHF radiotelephone equipment. We conclude that West Harbor Towing is apparently liable for forfeiture in the amount of one thousand one hundred dollars (\$1,100).

II. BACKGROUND

2. The GLA requires, among other things, that all vessels 65 feet or over in length (20 meters), most towing vessels, and vessels carrying more than six passengers for hire be equipped with a marine VHF radiotelephone installation when navigated on the Great Lakes. The GLA is intended to promote safety of life and property on the Great Lakes by means of radio and requires the radiotelephone installation be inspected and certified at least once every thirteen months. The inspection of GLA subject vessels may be performed by the holder of an FCC General Radiotelephone Operator License, GMDSS Radio Maintainer's License, Second Class Radiotelegraph Operator's Certificate or First Class Radiotelegraph Operator's Certificate.

3. On September 24, 2003 FCC agents from the Detroit Office conducted random inspections in Port Clinton, Ohio of vessels subject to the GLA to determine whether GLA inspections were being conducted and certified. The agents inspected the tugboat "West Harbor" and determined that the vessel did not have a current GLA safety inspection and certification. The agents also determined that the vessel had navigated the waters of the Great Lakes as a towing vessel. A review of the ship radiotelephone log indicated that the "West Harbor" had navigated on September 10, 2003, and September 13, 2003 without a valid GLA certification.

¹ Agreement Between Canada and the United States for the Promotion of Safety on the Great Lakes by Means of Radio T.I.A.S. 7837, amended T.I.A.S. 9352 (Great Lakes Agreement).

² 47 C.F.R. §§ 80.953(a), and 80.953(b).

III. DISCUSSION

4. In order to promote the safety of life and property on the Great Lakes, the Great Lakes Agreement, and Sections 80.953(a) and 80.953(b) of the Rules require that vessels subject to the GLA have the radiotelephone installation inspected and certified annually. The vessel “West Harbor” was not certified.

5. Based on the evidence before us, we find that West Harbor Towing willfully³ and repeatedly⁴ violated the Great Lakes Agreement and Sections 80.953(a) and 80.953(b) of the Commission’s Rules as a result of their vessel the “West Harbor” having navigated the Great Lakes on September 10 and September 13, 2003 without having had their radiotelephone installation inspected and certified as required by the Great Lakes Agreement. *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17113 (1997), *recon. denied*, 15 FCC Rcd 303(1999) (“*Forfeiture Policy Statement*”)⁵, sets the statutory maximum amount forfeiture at five hundred fifty dollars (\$550) per day for violation of Great Lakes Agreement. In assessing the monetary forfeiture amount, we must take into account the downward adjustment factors set forth in Section 1.80 of the Rules for non-Section 503 forfeitures, which include minor violations, good faith or voluntary disclosure, history of overall compliance, and inability to pay. While this is not a minor violation, the record reveals that West Harbor has an overall history of compliance. Applying the Policy Statement and the adjustment criteria to the instant case, we believe that a one thousand one hundred dollar (\$1,100) monetary forfeiture is warranted.

IV. ORDERING CLAUSES

6. Accordingly, IT IS ORDERED THAT, pursuant to Section 506(a) of the Act⁶ and Sections 0.111, 0.311 and 1.80 of the Rules⁷, West Harbor Towing is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of one thousand one hundred dollars (\$1,100) for willfully and repeatedly violating the Great Lakes Agreement and Sections 80.953(a) and 80.953(b) of the Commission’s Rules.

7. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, West Harbor Towing SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

³ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to Section 503(b) of the Act, provides that “[t]he term ‘willful’, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁴ Section 312(f)(2), which also applies to Section 503(b), provides: [t]he term “repeated”, when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.

⁵ 47 C.F.R. § 1.80.

⁶ 47 U.S.C. § 507(a).

⁷ 47 C.F.R. §§ 0.111, and 0.311.

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8. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. 200432360002, FRN: 0004 8484 01.

9. Any response to this NAL must be mailed to Federal Communications Commission, Enforcement Bureau, Spectrum Enforcement Division, 445 12th Street, S.W., Washington, D.C. 20554 and MUST INCLUDE THE NAL/Acct. No. 200432360002, FRN: 0004 8484 01.

10. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

11. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁸

12. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Sta. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Spectrum Enforcement Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

13. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail, Return Receipt Requested, to West Harbor Towing Service, 2175 N.E. Catawba Road, Lot 28, Port Clinton, Ohio 43452 and to West Harbor Towing Service, 19336 Laurel, Rocky River, Ohio 44116.

FEDERAL COMMUNICATIONS COMMISSION

James A. Bridgewater
District Director
Detroit Office

Attachment A – Condensed List of Small Entities, October 2002

⁸ See 47 C.F.R. § 1.1914.